

DECLARATION OF TIMOTHY S. WISE

1:20-cv-00056

I Timothy S. Wise have been **denied** grievance forms from August 2019 through the present date March 23rd, 2020, making my remedies completely unavailable. While in SHU, I asked Counselor R. Malone several times for grievance forms. R. Malone made excuses such as "I do not have any forms with me, I'll bring them next time." He never brought or provided me any grievance forms. I only ever spoke to R. Malone in SHU, 3 or 4 times and he always said the same thing about "not having any forms with him." I spoke to R. Malone about my seizures, medical staff ignoring my requests to be put back on anti-seizure medication, my placement in SHU due to seizures out of my control, excessive force used by staff while I was seizing and denial of my visits without sanction or justification. Malone said "you'll have to write it up." I asked if I "could just write it on regular paper?" R. Malone said "No, they will be rejected unless you put your issues on the regular forms." I explained to R. Malone, that I was experiencing recurring seizure activity, which was documented in my medical file and McDowell medical staff were aware but for no justifiable reason were denying me seizure or anti seizure medication." This was approximately mid August 2019. I broached this subject several times with R. Malone, as well as my visiting forms submitted to him not being processed, disregard of my medical bottom bunk restriction and being placed on a Top bunk for months. All to no avail.

R. Malone never provided grievance forms, not when I asked while in general population, nor the several times I asked him while in Special Housing due to seizures. Released after my first time in SHU due to seizure, I was placed in unit C-1, to accommodate my medical condition. I was unable to see R. Malone while in C-1 unit, due to lockdowns and restricted movements. The last time I seen R. Malone was in SHU approximately ~~around~~ October 2019, at which time he did not give me grievance forms and said he had not recieved any visiting form requests regarding me.

After not seeing R. Malone between October and December 2019, I stopped D. Pilant at my door in SHU on December 26th, and explained my issues of denial of medical needs regarding history of seizures and medical staff at McDowell denying me anti seizure medication even after it had been ordered by an outside Doctor, the refusal of R. Malone to process my visitors visiting form requests for months and denial of grievance forms. D. Pilant told me "you need to write it all up on grievances." I said "That's what I'm telling you, I've asked Malone and he has not brought them, I've asked everyone else that comes through and they all say I HAVE TO get them from Malone. I need grievance forms." D. Pilant said "That is not my job, I'll let Malone know."

I spoke to D. Pilant on 12-30-19, 1-14-20, 1-23-20, 1-28-20 and each of these times I reiterated my complaints of constitutional issues, and each time D. Pilant told me I "needed to get forms from R. Malone, and that he (D. Pilant,) would let Malone know."

On 1-30-20 my Case Manager, Mrs. Oxford came to my door on F-Range in SHU to get my cell mate Eddie T. Ware to sign his "Team papers." She apologized for not seeing either of us, but explained she had been on medical leave. I asked why we had not seen R. Malone in months? She stated "Malone is on extended leave since October, and will be gone for a while." I complained to her that we have not had a counselor for months and no one told us anything. I asked why the Unit Manager D. Pilant had not assigned someone else to take over Malone's duties if he "knew," he was on extended leave? She replied "He should have. What do you need?" I replied "grievance forms." She said she would bring some next time she came. She never did.

On 2-11-20 was the next time I spoke to D. Pilant. I was angry that Pilant had kept telling me for almost 2 months to "ask Malone," when he (Pilant,) knew Malone was on extended leave, and not only did Pilant as Unit Manager not assign someone else to take over Malone's duties, he also refused to simply bring me the needed grievance forms. D. Pilant

deliberately denied me access to grievance forms and made my remedies unavailable. When I confronted him with this he got angry and said "Malone is on 'light duty,' in the mail room." I said "then why can't he bring me a grievance form?" D. Pilant said "He's not allowed to come inside the rest of the prison." I said "I've not had a Counselor or any unit Team to help me in over 4 months, and you knew he was out and unavailable but kept telling me to 'Talk to Malone,' and 'You'd tell Malone.'" etc.. D. Pilant said "I'll get Officer Fields to bring you grievance forms." and then he left. Later that day, 2-11-20, I was taken out of my cell for an attorney call with Catherine Adinoro Shusky out of the Cleveland Public Defenders Office. Officer Fields was the one who was "setting in" to "monitor" my call, which my attorney argued and was not happy about. When I asked Officer Fields about the grievance forms, he said "Pilant never said anything to me about it."

On 2-21-20 I seen D. Pilant. He told me my investigation was closed on 1-22-20, determining to transfer me to another prison, but for some "unknown reason," my transfer packet was still "routing," meaning it was still inside the prison, being held up.

He then told me he did not have any grievance forms with him and left.

On 2-14-20, I stopped Case Manager White from A-unit and asked him in front of my Cellmate K. Braden, "How many times have I stopped you and asked for grievance forms?" He replied "I don't know but a lot!" I said "Each time you told me I had to get them from R. Malone, so did everyone else I asked. Then 2 weeks ago Mrs. Oxford told me Malone was out on "Extended Leave," since October 2019, and may be gone a lot longer." MR. White said "I know, but I'm not supposed to give you the forms, Pilant should have assigned someone to take over Malone's post, he's the Unit Manager after all. Or he should have brought you the forms himself." I said "I asked him but he said that was not his job." MR. White shook his head and left.

Since December 2019 through today April 2nd 2020, I've asked everyone I have seen, for grievance forms, R. Malone, D. Pilant, D. Rich, K. Marsh, K. Thompson, A. Shrader, V. Phillips, J. Green, D. Munn, and they all told me either they did not have the forms with them, or talk to my Counselor, even when they ALL knew my Counselor was unavailable.

Warden C. Maruka was also notified of this issue first by all of plaintiff's legal mail being opened, read and photocopied, then also via the Court ORDER received 3-20-2020, where United States Magistrate Judge Omar J. Aboulhosen notified Warden C. Maruka that "plaintiff alleges that Defendants Malone, Pilant and Phillips are denying him administrative remedies, thereby making the administrative remedy process unavailable." Now 4-2-2020, there's still been no one to provide plaintiff grievance forms. Staff are and have been aware of my requests for grievance forms, yet they've (Defendants,) flatly refused to provide them, making my remedies completely unavailable. My legal mail also continues to be opened, disseminated and photocopied outside my presence, including above mentioned Judicial ORDER on 3-20-2020.

Since July 23rd, 2019, when I made staff aware of my recurring seizures, and R. Alexander confirmed the fact of "History of Seizure," and issued a medical bottom bunk restriction, I requested and continually requested to be put back on the anti-seizure medication. I've been subjected to deliberate indifference to serious medical needs, cruel + unusual punishment, discrimination, failure to protect, harassment and retaliation for exercising a Constitutional right (filing a civil suit in this court.) On July 23rd, 2019, during my "intake screening," done on arrival to FCI McDowell by R.N. R. Alexander. At that time I informed Alexander that

"I have a history of Seizure and took antiseizure medication for a long time, Tegretol at one point, then Oxcarbazepine. When my seizure's went into remission for quite a while, I got off the medication, by my choice. In the last 18 months or more my seizure's have returned and I've had a dozen or more. I NEED to be put back on the anti seizure medication, to control and prevent more seizure's." R. Alexander confirmed to me at that time, he had verified my seizure history in my computer medical file. He then issued a bottom bunk restriction, which clearly stated it was for history of seizure. One copy for me, one copy for the Officers Station in my housing unit, where the on duty C.O. is responsible to be aware in case of medical emergencies. R. Alexander told me he'd "wrote up my need for antiseizure meds, watch the call out for an appointment to see P.A. Carothers."

I was sent to my housing unit, B-4, up two flights of stairs to a top bunk. I showed the unit officer my bottom bunk restriction. He stated "You'll have to talk to the Counselor, Malone, tomorrow." The next day I went to Malone about my bottom bunk restriction. Malone said "There are no bottom bunks open right now, just give me some time." I told him "I'm fearfull of Seizing in my sleep, falling and hurting myself. I am not comfortable being on a top bunk." Malone said "You can stay where I put you for now, or I can put you in SHU." I was forced to concede. The amount of stress and loss of sleep this caused me was massive. Inmate's told me not to anger Counselor Malone, that he "plays dirty."

Sometime approximately September 2019 I had a Seizure. The distress button in my cell was activated. The responding Officer S. COOK, was told by another inmate, "He is having a Seizure." (upon belief and information.)

S. COOK replied "B.S. he's on drugs." Due to this Officer's disregard of my medical condition, of which he had a copy of my medical restriction due to seizures, he and the other responding Officers attacked me physically, battering and abusing me while I was seizing. After beating on me, S. COOK Cuffed me behind my back without double locking the Cuffs, which is standard procedure to keep the Cuffs from ratcheting down too tightly on the wrists. My legs were shackled and I was carried outside the unit, face down to a gurney waiting at the bottom of the steps. At no point, from the time I came out of seizure and prior to being cuffed was I combative. I repeatedly pleaded to S. COOK and the other unknown Officers that "I had a seizure, I'm not resisting, why are you doing this to me?" The abuse did not stop. Once at the gurney I was flipped in mid air by several Officers and slammed down on the gurney on my back, with my body weight ratcheting the Cuffs down on my wrists brutally cutting skin and bruising to the bones, while my bound hands and metal Cuffs were digging into my lower back painfully. I screamed because of the

immediate and excruciating pain. My pleas and tears were ignored while the C.O.'s wound a strap over my body and legs, then padlocked it, preventing me from moving or alleviating the pressure and horrible pain in my wrists and back at all. I was wheeled across the compound on the gurney like this to the Lieutenant's Office and parked with no relief for approximately 2 hours. During this time I pleaded and begged for relief of the crushing pressure on my wrists and said to everyone who could hear "I had a seizure, why are you doing this to me, please loosen the cuffs my hands are hurting so bad." etc.. I was mocked, laughed at and called "drug addict," "junkie," and "clown." My pleas were ignored. I was never seen by anyone from the FCI McDowell medical staff. Though my disability is copiously recorded in my medical file and the FCI McDowell medical staff created and circulated my medical bottom bunk restriction due to history of seizure, I was thrown in Special Housing Unit (SHU) for approximately 18 days of extremely harsh conditions. (i.e. No books, newspapers, magazines or radios allowed, neither from the publishers or institution book cart per CFR + B.O.P. policy, completely cutting me off from the outside world. Even the incoming mail was being denied for long periods, and none was received during this time.) R. Malone came to see me approximately seven

days after I was placed in SHU. I specifically and passionately requested grievance forms. He (R. Malone) said he "do not have any with me, but I'll bring some when I come back through SHU." R. Malone never brought grievance forms to me.

Officer S. Cook had written an incident report for drug use. In the incident report, someone from medical staff stated "inmate Wise is on no medications and has no preexisting conditions to explain his behavior." During the hearing the Disciplinary Hearing Officer listened to my statement "I have a history of seizure. I was having a seizure. I tested negative for drugs immediately after the incident. No drugs were found and I've never in almost 22 years been guilty of using drugs." My hearing was postponed while the DHO researched my medical history, which conflicted with the statement from medical staff in the incident report. The incident report was expunged. A short time later R. Malone came to see me in SHU. He said "I forgot the grievance forms wise, but you have bigger problems." When I asked "what problems?" He stated "I know the shot (incident report) was expunged, but I can't let you out of SHU because the inmates in B-4 unit don't want you back. They 'think' you had a drug episode, apparently Officer S. Cook was very vocal about it, and now the inmates are 'regulating.' this drug problem because they are tired of being 'shook down.'"

by Staff. They do not want to be on the wrong side of Cook either." I was shocked and said "MR. Malone, you know about my seizures and medical history, I did not do anything wrong, yet I've been beat up by staff and stuck in this messed up SHU for weeks, I want OUT!" Malone then asked "If I could get you moved to another unit, bottom level, bottom tier, bottom bunk, would you be good with it?" I replied "Yes, I want out of SHU." While in SHU, I submitted multiple sick call requests regarding seizures and my need to be put back on anti seizure meds. I received no response. I was never seen by medical and could not convince anyone to help me or investigate, that is when I could get them to stop at my door. I asked S. Wyatt, G. Walters and R. Alexander every time I seen them and at best was told "put it on a sick call slip." I was denied grievance forms so long I asked R. Malone if I could write my grievances on blank paper? He said "They will not be processed unless they are on the official forms, but I will bring them next time." I was released to unit C-1 the next day. The same evening I was released, the entire institution was locked down for 2 weeks. Counselor Malone never came around during the lock down. After the lock down, restricted movements made R. Malone unavailable to me. Approximately six days after the lock down ended, an officer

Came to my door, after count, while all the inmates doors in the housing Unit C-1, and opened my door, Waking me from Sleep on my bunk. He immediately began yelling at me. Startled from sleep, I could not process what was going on. The Officer Said "Come here." Motioning me toward him with a beckoning finger while he stood at the door. As I approached he physically grabbed my arm and jerking me out of the cell he said "let me guess, you're having another seizure." He then pulled me to the Sallipoint where two other C.O.'s were waiting. One of them told me "Turn around and Cuff up." I complied by placing my hands behind my back and the Officer #2 grabbed my hands and yanked my arms up behind me until it felt like my Shoulders would pop out of Socket. The pain caused me to lose Control of my bladder, and Officer #1 said "look he's pissing himself." They all three laughed. I was not Seen or evaluated by medical. I was given a drug screen urinalysis which came back Negative. I was given an incident report for drug use. Approximately 5 days later Counselor R. Malone came to perform my unit Disciplinary Committee to refer the incident to the Disciplinary Hearing Officer. Counselor Malone said "You really pissed Cook and his buddies off when you got out of the Write up he gave you. This incident is a 100 series,

I have to refer it to DHO, do you have any comment?" I replied "No." Then Signed for my "Notice of having my Miranda rights read." I then told Malone "I still need grievance forms." He wrote a note and once again told me he would bring grievances the next time he came to SHU. This was some time approximately October 2019. I have not seen R. Malone again since that time. No one else was assigned to take over R. Malone's duties during his absence. No one has provided me any grievance forms to date April 2nd, 2020, despite my asking everyone I have seen to talk to and informed of my issues including R. Malone, D. pilant, V. phillips, D. Rich, A. Shrader, K. Marsh, K. Thompson, Case Manager White from A-unit, Counselor Thomas also from A-unit, Mrs. Oxford and several others.

Approximately 20 plus days in SHU, the incident report was expunged due to total lack of evidence. I was released and sent back to unit B-4 upper unit, upper floor upper bunk in cell # 228. This being my original unit where staff knew the inmates did not want me due to S. Cook's handling of my first seizure. I looked for Counselor R. Malone and was told he was "on leave." This was November 24th 2019. I spoke with Case Manager Mrs. Oxford. She called V. phillips and had me moved back to

Unit C-1 a bottom unit, bottom floor and bottom bunk to accomodate my medical restriction as well as to prevent on inmate on inmate altercation, from inmates fear of angering Officer S. Cook. Cook was angry his incident report got expunged and let it be "known" he did not want me back in the unit.

On December 9th, 2019, I had a seizure in unit C-1 Cell #110. I came to in Welch at the hospital. Doctor Robert Southerland evaluated me. He said "The officer in your unit saw you hit your head on a steel bunk and knock yourself unconscious. The Officers with you say this has happened two or three times and they think you are on drugs. Are you on something?" I said "I am not on drugs. I had a seizure." He asked "Do you have a history of seizure?" and "are you on medication for that?" I replied "Yes I have a history of seizure, it is in my medical file, it's also noted on the medical 'bottom bunk,' restriction M^cDowell medical staff issued me. I was on Tegretol and Oxcarbazepine before, but when my seizures went into remission for quite a while I got off the medication. I've been trying for more than 4 months to get M^cDowell medical staff to put me back on anti seizure medication, but I've not even been seen despite many requests." Doctor Southerland said "one of the officers escorting you said the cuffs are

tight because you tried to bite one of the responding Officers." I said "When I am coming out of a seizure, I do not know what's going on, and it's like waking up to people attacking you for no reason. It's frightening and instinct takes over. I do not ever want to hurt anyone, but I do not want to be hurt either." I was given a CT Scan then placed in a room to wait. Doctor Southerland came back and told me he had consulted a Neurologist in Beckley, WV, regarding me. He gave me 1000mg of KEPPRA anti seizure medication orally and said "I'm prescribing you KEPPRA and you'll be receiving it from now on." I thanked him and was then taken back to FCI McDowell in a prison Van. My escort asked the Lieutenant if I could be sent back to my assigned cell and housing unit? The Operations LT, asked "where's he been?" The escort replied "He had a seizure. We took him to the hospital in Welch, the DR. gave him some anti seizure medication and released him." The Operations LT responded "sounds like a B.S. excuse for getting high to me, throw his ass in SHU." I was X Ray Scanned for drugs then taken to SHU. I was not seen by medical staff, nor given any medication.

On December 9th and 10th, I was placed in a "Hard Cell," which only has a concrete slab with very thin hard mat, a sink and toilet. This is reserved as a punishment cell for disruptive inmates. I had done nothing wrong, had not been issued an incident report, had not been combative or disruptive at all. Staff in SHU let it be known I was being punished because they "thought I was a drug addict."

On the 10th, 11th, 16th and 18th, I spoke to the Pill Line Nurse continually asking about the anti seizure medication Doctor R. Southerland had prescribed on December 9th, 2019, yet I was not receiving. Finally on 12-19-19, R. Alexander told me "I checked and the Doctor prescribed you KEPPRA on December 9th. It's an anti seizure medication." I asked "Then why am I not receiving it, or anything, when no one here in McDowell has seen or evaluated me, yet someone is denying me a needed medication prescribed by a real Doctor? This is crazy." R. Alexander replied "I'm looking into it."

Between 12-20-19 and 12-26-19, I explained my situation to G. Walters. He gave me a sick call slip, not wanting to "hear about it." I filled out and gave him the detailed sick call slip along with an Official B.O.P. Medical Release form to release my medical records to my attorney of record Catherine Adinarro Shusky. I signed it in front of G. Walters and asked him to "Witness," it but he flatly refused, saying he would "turn it in and someone else could witness it." It was not processed. Even though G. Walters and the Nurses are the only medical staff available usually in SHU, he is non cooperative, indifferent, combative and hateful.

On 1-26-20 I gave K. Thompson, the Health Services Administrator, who was acting institution Duty officer (IOO) a second official B.O.P. medical records release, which I signed in front of him and he signed as a witness, and said he would make sure I got processed. As far as I know it has still not been processed. I had to sign another release and send it to my lawyer, which she herself sent to FCI McDowell Medical Department to have my medical records released (approx. 30 days ago,) and still no indication any of the three, (3) releases are being processed.

I also spoke to K. Thompson on 1-25-20 and 3-10-20. Both times I explained the denial of medication prescribed by a Doctor, my being abused and placed in SHU repeatedly for months due to seizures, and the fact that I'd never been evaluated or talked to by FCI McDowell medical staff. Not even after I was seriously hurt on 1-2-20, when I was placed in a "Dry Cell," then a "hard cell" for 5 days without being seen or given any medication, even though ^{R. Alexander} ~~Dr. Alexander~~ agreed that he thought I had an intercostal rib dislocation, and seen basketball size bruises on my hips and left leg which also had a large cut across the middle of the bruise.